

**Amendments to the Drawings:**

The attached sheet has a new drawing. It is FIG. 4 and shows, *inter alia*, bevel 25 on the first end 4 of leg 6. .

Since it is not a replacement sheet, the headings “Replacement Sheet” and “Annotated Sheet Showing Changes” have not been utilized.

## REMARKS/ARGUMENTS

### Specification and Drawings

The specification has been amended to include a brief description of new Figure 13, which was added to resolve the Examiner's observation that none of the figures included reference sign 25.

Paragraph 16 was amended to include the word "rod" with survey in one location where it had been inadvertently omitted.

### Claim Objections

The Examiner correctly observed that claim 35 should depend upon claim 34, rather than claim 36. An appropriate amendment has been made.

### Claim Rejections

#### 35 U.S.C. § 112

The Examiner has stated:

In claim 3, line 16, "an axis" should read -the axis-. A similar problem occurs in claims 12, 13, 14, and 25.

Applicant could not locate this issue in claim 25 but did in claim 24. Thus, claims 12, 13, and 24 have been so corrected.

Claim 14 included the survey rod; thus, as can be seen appropriate from paragraph 16, claim 14 has been amended to refer to positions with respect to the survey rod, rather than positions with respect to the axis utilized for reference when no survey rod is present.

Next, the Examiner has observed:

In claim 5, lines 2 and 4, "the attachment" lacks proper antecedent basis. A similar problem occurs in claims 8, 11, 16, 19, 22-24, 26, 29, 32, 38, and 41.

Applicant was unable to locate this situation in claim 24 but did in claim 35. Appropriate amendments were made, although Applicant respectfully believes the requisite antecedent basis is present. Considering, as the Examiner has, just claim 5 explicitly, the relevant portion of claim 4, upon which claim 5 depends, states [emphasis added]:

a first spring rod having a first end and a second end with *the second end of said first spring rod attached to said first leg* below the point of rotation for said first leg;

a second spring rod having a first end and a second end with *the second end of said second spring rod attached to said second leg* below the point of rotation for said second leg; and

MPEP § 2173.05(d) provides, in pertinent part:

A claim is indefinite when it contains words or phrases whose meaning is unclear. The lack of clarity could arise where a claim refers to "said lever" or "the lever," where the claim contains no earlier recitation or limitation of a lever and where it would be unclear as to what element the limitation was making reference. Similarly, if two different levers are recited earlier in the claim, the recitation of "said lever" in the same or subsequent claim would be unclear where it is uncertain which of the two levers was intended. A claim which refers to "said aluminum lever," but recites only "a lever" earlier in the claim, is indefinite because it is uncertain as to the lever to which reference is made. Obviously, however, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. If the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. *Ex parte Porter*, 25 USPQ2d 1144, 1145 (Bd. Pat. App. & Inter. 1992) ("controlled stream of fluid" provided reasonable antecedent basis for "the controlled fluid"). Inherent components of elements recited have antecedent basis in the recitation of the components themselves. For example, the limitation "the outer surface of said sphere" would not require an antecedent recitation that the sphere has an outer surface. >See *Bose Corp. v. JBL, Inc.*, 274 F.3d 1354, 1359, 61 USPQ2d 1216, 1218-19 (Fed. Cir. 2001) (holding that recitation of "an ellipse" provided antecedent basis for "an ellipse having a major diameter" because "[t]here can be no dispute that mathematically an inherent characteristic of an ellipse is a major diameter").<

Applicant does not believe that the reference to a lack of antecedent basis meant such a lack in the disclosure. To be certain, however, attachment of the spring rods to the survey rod or to the collar is described in paragraph 0014 of the Application; attachment of the spring rods to the legs is discussed in paragraph 0015.

The Examiner continues:

In claim 6, lines 3 and 5, “the extension” lacks proper antecedent basis. A similar problem occurs in claim 7, 9, 10, 18, 20, 21, 27, 28, 30, 31, 37, 39, 40, 44 and 46.

Appropriate amendments have been made to the cited claims as well as claim 36 in which the same situation appeared to exist. Again, however, Applicant respectfully believes the requisite antecedent basis is present, as explained by MPEP § 2173.05(e).

The relevant language from each of the claims in question is essentially the same as that of claim 6:

the first end of said first leg has a bevel that rotates toward and eventually against said grip as said first leg is extended, thereby limiting the extension of said first leg; and

the first end of said second leg has a bevel that rotates toward and eventually against said grip as said second leg is extended, thereby limiting the extension of said second leg.

Antecedent basis is contained within paragraph 18 of the disclosure.

The Examiner then explains:

In claim 13, lines 7 and 10, recites “rigid spring rod”. It is unclear as to how a spring rod is rigid when by inherently a spring is resilient. Please clarify. A similar problem occurs in claims 11, 41 and 45.

*The American Heritage dictionary of the English Language* published by American Heritage Publishing Co., Inc. and Houghton Mifflin Company, and copyrighted in 1970 defines “spring” as follows:

v. *—intr.* 1. to move upward or forward in a single quick motion; leap. 2. To appear or emerge suddenly. 3. To shift position suddenly: *The door sprang shut.* . . . *—tr.* To cause to leap, dart, or come forth suddenly. *—n.* . . . 2. An actuating force or factor . . .

It is in the preceding sense that “spring” is used in “spring rod” since the spring rod causes the legs to extend quickly when the survey rod is placed on a surface, as explained in paragraph 0017 of the Application:

[0017] When it is desired to have the Support hold the survey rod 2 in an elevated position, the tip 21 of the lower end 11 of the survey rod 2 is placed on a surface; and the grip 1 is pushed toward the lower end 11 of the survey rod 2. Because the second ends 16, 18 of the spring rods 9, 10 are farther from the survey rod 2 than are the first ends 7, 8 of the spring rods 9, 10, this forces the second ends 16, 18 even farther from the survey rod 2, thereby pushing the lower ends 22, 23 of the legs 5, 6 farther from the survey rod 2 and creating a stable Support for the survey rod 2.

Furthermore, in paragraph 0019 it becomes evident that the spring rods are not necessarily resilient since it is stated that such spring rods are preferably resilient.

MPEP § 2111.01 clarifies, in pertinent part:

... If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms. *Brookhill-Wilk I*, 334 F. 3d at 1300, 67 USPQ2d at 1137; see also *Renishaw PLC v. Marposs Societa" per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings."). If more than one extrinsic definition is consistent with the use of the words in the intrinsic record, the claim terms may be construed to encompass all consistent meanings. *Tex. Digital*, 308 F.3d at 1203, 64 USPQ2d at 1819. See also *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001)(explaining the court's analytical process for determining the meaning of disputed claim terms); *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999)("[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning.").

The Examiner continues by accurately observing that claim 14 is intended to apply to a combination and courteously provided the appropriate language for the preamble. This language was incorporated into all the claims identified by the Examiner plus several others which are directed to the combination of a support with a survey rod.

Finally, the Examiner correctly noted a problem of double inclusion with claim 17. This was caused by a typographical error regarding the dependency. Claim 17 has, accordingly, been amended to depend upon claim 16, eliminating the double inclusion.

The Examiner generously indication the manner in which claims 2 through 47 could be amended to be allowable. Applicant has attempted to follow this excellent guidance.

Applicant respectfully requests the Examiner to allow claims 1 through 10.

DATED this 7<sup>th</sup> day of April, 2005.

Respectfully,

Ken Gardner

By Thompson E. Fehr  
Thompson E. Fehr  
Attorney  
Registration No. 31353  
(801) 393-6292

Attorney's Address:

Suite 300  
Goldenwest Corporate Center  
5025 Adams Avenue  
Ogden, Utah 84403